IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.1095 OF 2001

IN

COMPANY PETITION NO.275 OF 2001

...

Magna Laboratories (Gujarat)
Pvt.Ltd. ...Appellant

v/s.

Surgix Health Care Ltd. ...Respondent

...

Mr.V.P.Sawant i/b A.N.Jakhadi for the Appellant.

Mr.S.U.Kamdar i/b Thakore Jariwala & Associates for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 13TH SEPTEMBER, 2007

P.C.:

By this Appeal, the Appellant challenges the order dated 27th September, 2001 passed in Company Petition No.275 of 2001 by the learned single Judge of this court rejecting the company petition.

2. Apart from the merits of the matter, it is an admitted position that the debt which was the subject matter of the company petition for winding up of the Respondent-company, there is no civil suit filed for recovery of that debt. Even according to Appellant, part payment was made in the year 1999. After 1999, admittedly there is neither any acknowledgement nor is there any part payment. Therefore, as on today, it cannot be said that the debt which was the subject matter of the company petition is a live debt. Perusal of the judgment of the Division Bench in the case of Kashinath Shankarappa v/s. The New Akot Cotton Ginning and Pressing Co.Ltd., AIR (38) 1951 Nagpur 255, shows that the debt has to be alive on the date on which the order of liquidation of the company is to be made. In our opinion, therefore, it

will not be appropriate to admit the company petition at this stage, specially when an order admitting the company petition for winding up is in the discretion of the court.

3. The order impugned in this Appeal, therefore, does not call for interference at our hands. Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)